

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
:	
FRED ALSTON, as a Trustee of the Local 272 Labor-	:
Management Pension Fund and a Trustee of the Local 272	:
Welfare Fund,	:
	: 1:24-cv-5971-GHW
	: Plaintiff, : <u>ORDER</u>
	: -v- :
1699 NEW YORK AVE PARKING LLC,	:
	: Defendant. : :
-----	X

GREGORY H. WOODS, United States District Judge:

Plaintiff commenced this action on August 6, 2024. Dkt. No. 1. On August 7, 2024, the Court scheduled an initial pretrial conference for October 17, 2024 and directed that the parties submit a joint status letter and a proposed case management plan no later than October 10, 2024. Dkt. No. 8. The parties did not do so. Accordingly, on October 16, 2024, the court ordered the parties to submit the materials forthwith, and, in any event, no later than October 17, 2024. Dkt. No. 16. On October 17, 2024, Plaintiff's counsel submitted a letter to the court in response to the Court's order directing compliance with its August 7, 2024 order. Dkt. No. 17 ("Plaintiff's Response").

Because Plaintiff had not requested an adjournment of the conference, the Court, the Court's staff and a court reporter appeared for the October 17, 2024 conference. Counsel for Plaintiff appeared. No representative of Defendant appeared. Because no representative of Defendant had appeared, the Court adjourned the conference without discussing the case.

Plaintiff's Response is predicated on several misunderstandings by counsel for Plaintiff. In the response, counsel for Plaintiff explains his decision not to comply with the Court's August 7, 2024 order, explaining that, in his view there "did not appear to be any need for a joint status letter or case management plan." Plaintiff's Response. However, counsel may not elect whether or not to

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 10/17/2024

comply with court orders in his discretion. Confronted with this situation, counsel is advised to make an application to the Court for relief from the order, rather than to choose simply not to comply.

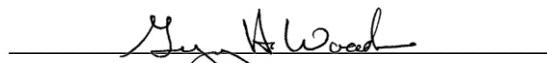
Second, counsel for Plaintiff states in the response that rather than complying with the Court's order or requesting an adjournment of the conference in writing, he "decided to wait for the conference and inform the Court that I intended to seek a judgment by default." *Id.* This decision is also based on two apparent misunderstandings by counsel for Plaintiff. First, it assumes that the Court would engage in *ex parte* communications with him at a conference. And second, it assumes that it is more efficient to require the Court, the Court's staff and court reporter convene for a conference, rather than for counsel to submit a letter informing the Court of the status of the case, requesting an adjournment of the conference, and requesting leave to file an application for an order to show cause for the entry of default judgment. Confronted with this situation, counsel is advised to consider whether a letter to the Court would be a more appropriate and efficient means to communicate with the Court.

The Court understands that Plaintiff wishes to pursue an application for default judgment in this case. The Court expects that any application for the issuance of an order to show cause for default judgment will be filed no later than November 15, 2024. Any application must be made in a manner that is fully consistent with the Court's Individual Rules of Practice in Civil Cases. Failure by counsel to comply with the Court's Individual Rules of Practice may result in the imposition of sanctions.

Plaintiff is directed to serve a copy of this order on Defendant and to retain proof of service.

SO ORDERED.

Dated: October 17, 2024  
New York, New York




---

GREGORY H. WOODS  
United States District Judge